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# **SUPREME COURT OF ALABAMA**

**SPECIAL TERM, 2022**

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**Ashley Page Harris**

**v.**

**Todd L. Hicks, Susan P. McMullan, Jeremy D. Taylor, Gary C. Hammond, Peter M. Tofani, Katie O. Woodfin, Dana Lambert, and Jacqueline Moss**

**Appeal from Montgomery Circuit Court  
(CV-18-901503)**

SELLERS, Justice.<sup>1</sup>

Ashley Page Harris appeals from the dismissal of her claims against several people involved with the nurse anesthesia program at the University of Alabama at Birmingham Nursing School ("the nursing school"). According to Harris's complaint, she was a student at the nursing school until she was dismissed in August 2016.

Harris sued in the Montgomery Circuit Court three nurses at Baptist South Hospital ("the hospital") in Montgomery who were tasked with providing the nursing school with evaluations of Harris's clinical work at the hospital. She also sued a supervising nurse at the hospital who relayed those evaluations to the nursing school. Finally, she sued four educators and administrators at the nursing school who were involved in the process that resulted in Harris's dismissal from the nursing school. Harris purported to state claims against the defendants in their individual capacities. The trial court granted the defendants' motion to dismiss based on State-agent immunity. In addition, it also concluded that 9 of Harris's 12 counts failed to state claims upon which

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<sup>1</sup>This case was originally assigned to another Justice on this Court; it was reassigned to Justice Sellers on May 19, 2022.

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relief can be granted. As discussed below, we affirm the trial court's judgment with respect to three of the defendants based on State-agent immunity, reverse the trial court's judgment to the extent it held that the remaining defendants are entitled to a judgment in their favor based on State-agent immunity at the motion-to-dismiss stage, and affirm the trial court's judgment to the extent that it concludes that Harris failed to state valid claims in nine of her counts.

#### Facts and Procedural History

Harris entered the nursing school as a student in the fall of 2014. As a requirement of the nurse anesthesia program, Harris performed clinical work at the hospital in August 2016. Three nurses at the hospital, namely, Jeremy D. Taylor, Gary C. Hammond, and Dana Lambert, provided evaluations of Harris's clinical work. Harris alleges that those evaluations were "false, erroneous, incomplete, inaccurate, and prepared in bad faith." In fact, she claims that the evaluation prepared by Hammond was for a different nursing student but was incorrectly submitted as an evaluation of Harris's work. According to Harris, the evaluations resulted in the hospital's decision to refuse to allow her to continue her work there and in personnel at the nursing

school giving Harris a failing grade in her clinical nursing course and in dismissing her from the nursing school. Taylor, Hammond, and Lambert are named as defendants in Harris's complaint.

Another defendant, nurse Todd L. Hicks, also works at the hospital in a supervisory role. Hicks relayed the evaluations prepared by the other three nurses to the educators and administrators at the nursing school. Harris accuses Hicks of failing to ensure the accuracy of the evaluations.

Defendant Susan P. McMullan is a professor at the nursing school and is the director of the nurse anesthesia program. According to Harris, McMullan unilaterally made the decision to dismiss Harris from the nursing school. Harris criticizes McMullan for allegedly not "following required due process" before dismissing Harris.

Defendant Peter M. Tofani is an assistant dean for student affairs at the nursing school. He communicated with Harris and her attorney regarding the dismissal and appeal procedures. Harris accuses Tofani of failing to follow proper procedures in order "to cover up the negligent, wanton, intentional, and/or bad faith actions of the other Defendants."

Defendant Katie O. Woodfin is an instructor at the nursing school. Harris's complaint suggests that Woodfin worked alongside McMullan in reviewing the clinical evaluations created by the nurses at the hospital. Harris asserts that Woodfin should have done more to verify the accuracy of those evaluations.

Finally, defendant Jacqueline Moss is an assistant dean at the nursing school. She chaired a "grievance hearing panel" that considered Harris's objections to her dismissal from the nursing school. According to Harris, Moss was "biased" and improperly refused to allow Harris to examine all the witnesses she wanted to examine at the grievance hearing, including the three nurses at the hospital who generated the clinical evaluations, and refused to allow Harris to submit all the questions she wanted to submit to the witnesses who did testify at the hearing. After the hearing, Moss prepared a report recommending that Harris's dismissal be upheld.

Harris's complaint sets out 12 counts for relief, namely, 2 counts of invasion of privacy against all the defendants; 1 count of invasion of privacy against McMullan, Woodfin, Tofani, and Moss; 1 count of negligence against all the defendants except Moss; 1 count of negligence

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against McMullan; 1 count of negligence against Tofani; 1 count of defamation against all the defendants; 1 count of interference with business relations against all the defendants; 1 count of "wrongful termination" against all the defendants; 1 count of wantonness against all the defendants; 1 count of fraud against all the defendants; and 1 count requesting declaratory and injunctive relief.

The defendants filed a motion to dismiss, arguing that they are all entitled to State-agent immunity under Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion), which has been codified at § 36-1-12, Ala. Code 1975. They also argued that Harris had failed to state a claim upon which relief can be granted in all counts except the three negligence counts. The trial court granted the motion to dismiss on the ground of State-agent immunity. It also agreed with the defendants that Harris had failed to state a claim with respect to all but the three negligence counts. Harris appealed.

#### Standard of Review

The parties agree that this Court should apply the standard of review applicable to the dismissal of an action under Rule 12(b)(6), Ala. R. Civ. P. In considering a ruling on a motion to dismiss under Rule

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12(b)(6), this Court considers whether, "when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to relief." Nance v. Matthews, 622 So. 2d 297, 299 (Ala.1993). "This Court does not consider whether the plaintiff will ultimately prevail, but only whether the plaintiff may possibly prevail." Lyons v. River Rd. Constr., Inc., 858 So. 2d 257, 260 (Ala. 2003). A "Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." Nance, 622 So. 2d at 299.

Collateral Estoppel and the State-Agent Immunity of Defendants  
McMullan, Tofani, and Hicks

In an earlier action, Harris sued McMullan, Tofani, and Hicks, asserting the same alleged misconduct she asserts in the present case. That action was removed to the United States District Court for the Northern District of Alabama, which dismissed Harris's claims based on principles of federal qualified immunity.

Consideration of a qualified-immunity defense requires an initial analysis of whether a government official was acting within the scope of his or her discretionary authority when the allegedly wrongful acts

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occurred. Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1264 (11th Cir. 2004). The federal court in Harris's action against McMullan, Tofani, and Hicks concluded that, in participating in the evaluation and dismissal of Harris from the nursing school, those defendants "were acting in the scope of their discretionary authority when they took the allegedly wrongful acts because their 'actions were undertaken pursuant to the performance of [their] duties and within the scope of [their] authority.'" Page v. Hicks, No. 2:16-CV-01993-KOB, Feb. 12, 2018 (N.D. Ala. 2018) (not reported in Federal Supplement) (quoting Rich v. Dollar, 841 F.2d 1558, 1564 (11th Cir. 1988)).

Collateral estoppel, also known as issue preclusion, bars a party from relitigating "an issue identical to the one litigated in the prior suit" when "resolution of the issue was necessary to the prior judgment" and the parties are the same. Dairyland Ins. Co. v. Jackson, 566 So. 2d 723, 726 (Ala. 1990). Based on the federal court's ruling, the trial court in the present case concluded that issue preclusion prohibits Harris from asserting that McMullan, Tofani, and Hicks "were not acting within the scope of their discretionary authority as required for State-agent



immunity protections" and that, "[a]ccordingly, State-agent immunity bars each of [Harris's] claims" against those defendants.

In addressing issue preclusion in her brief to this Court, Harris asserts broadly that the federal court considered only federal principles of qualified immunity and did not specifically address State-agent immunity under Alabama law. Thus, according to Harris, "State-agent immunity has never been litigated ... between these parties."

In support of its ruling on issue preclusion, the trial court specifically relied on Roden v. Wright, 646 So. 2d 605, 609-11 (Ala. 1994), in which this Court considered whether the chairman of a county commission was entitled to "good faith" immunity under 4 Restatement (Second) of Torts § 895D (Am. L. Inst. 1979), a type of immunity noted in the plurality's discussion of State-agent immunity in Cranman. The Court in Roden held that the plaintiff in that case was collaterally estopped from arguing that the defendant was not entitled to "good faith" immunity because a federal court had already determined in a previous action that the defendant was entitled to qualified immunity under federal law.

The trial court's reliance on Roden suggests that the court reasoned that, in Harris's previous action, the federal court's analysis and conclusion regarding federal qualified immunity encompassed all the requirements necessary to make Tofani, Hicks, and McMullan immune under principles of State-agent immunity. As the appellant, Harris has the burden on appeal. Johnson v. Life Ins. Co. of Alabama, 581 So. 2d 438, 444 (Ala. 1991) ("An appellant has the burden of showing that a trial court has committed error ...."). In her briefs to this court, Harris ignores the trial court's apparent rationale based on Roden. Thus, she has not demonstrated that the trial court erred in concluding that Harris is precluded from arguing that Tofani, Hicks, and McMullan are entitled to State-agent immunity.<sup>2</sup>

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<sup>2</sup>Harris suggests that the trial court should not have considered the federal court's judgment for purposes of issue preclusion because, Harris asserts, matters outside the pleadings generally should not be considered in ruling on a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P. The parties do not discuss any authority regarding the issue whether a publicly available court order can be considered on a motion to dismiss based on principles of collateral estoppel. In any event, Harris ignores the portion of Rule 12(b) providing that matters outside the pleadings can be considered on a motion to dismiss under Rule 12(b)(6) if the motion is treated as a summary-judgment motion under Rule 56, Ala. R. Civ. P. Harris herself submitted the federal court's judgment for the trial court's consideration, and she has not argued that the motion to dismiss was improperly converted to a summary-judgment motion as to this issue or

The Remaining Defendants' State-Agent Immunity Arguments

The three nurses working at the hospital who generated the clinical evaluations that resulted in Harris's dismissal from the nursing school, i.e., Taylor, Hammond, and Lambert, were not involved in the federal lawsuit and therefore cannot assert issue preclusion. The same is true with respect to nursing-school educators/administrators Katie Woodfin and Jacqueline Moss. Those defendants, however, assert that they are nevertheless entitled to State-agent immunity.

In their motion to dismiss, the defendants relied on the following portions of § 36-1-12, Ala. Code 1975, which codified Cranman's restatement of State-agent immunity:

"(c) An officer, employee, or agent of the state ... is immune from civil liability in his or her personal capacity when the conduct made the basis of the claim is based upon the agent's doing any of the following:

"(1) Formulating plans, policies, or designs.

"(2) Exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:

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that, to the extent it was converted, Harris was denied the procedural protections of Rule 56.

"a. Making administrative adjudications.

"b. Allocating resources.

"c. Negotiating contracts.

"d. Hiring, firing, transferring, assigning, or supervising personnel.

"....

"(5) Exercising judgment in the discharge of duties imposed by statute, rule, or regulation in ... educating students."

Section 36-1-12 goes on to provide the following exceptions to State-agent immunity, which were also initially set out in Cranman:

"(d) Notwithstanding subsection (c), an ... officer, employee, or agent of the state is not immune from civil liability in his or her personal capacity if:

"(1) The Constitution or laws of the United States, or the Constitution of this state, or laws, rules, or regulations of this state enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

"(2) The ... officer, employee, or agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

Harris asserts that her action should not be resolved based on State-agent immunity at the motion-to-dismiss stage. She points to precedent indicating that State-agent immunity typically should be reserved for the summary-judgment stage after discovery has taken place. Indeed, this Court recently noted:

"[O]nly after a State-agent defendant has shown agency and covered conduct is the plaintiff required to show a Cranman exception [to State-agent immunity]. Thus, in pleading a claim against a State agent, a plaintiff's initial burden is merely to state a cause of action against the defendant. The plaintiff need not anticipate a State-agent-immunity defense by pleading with particularity a Cranman exception. Therefore, unless the inapplicability of all the Cranman exceptions is clear from the face of the complaint, a motion to dismiss based on State-agent immunity must be denied."

Odom v. Helms, 314 So. 3d 220, 229 n.3 (Ala. 2020). See also Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000) (majority opinion adopting Cranman's restatement of the law governing State-agent immunity) ("At first blush, it appears that some claims, such as those regarding the use of personnel, hiring and supervising personnel, and the formulation of the demolition plan, are due to be dismissed, pursuant to the Cranman test. However, if any employee ... acted willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken

interpretation of the law, then it is possible that that employee would not be entitled to State-agent immunity. ... It is conceivable that the families could prove facts that would show that one or more of the employees ... acted willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law. If so, the families 'may possibly prevail' on their claims. Therefore, the trial court properly denied the employees' motion to dismiss the claims stated against them in their individual capacities."). But see Ex parte Wilcox Cnty. Bd. of Educ., 285 So. 3d 765, 778-79 (Ala. 2019) (granting mandamus relief regarding trial court's denial of motion to dismiss based on State-agent immunity because complaint failed to allege a Cranman exception).

At this preliminary stage of the litigation, when we construe the allegations in the complaint in Harris's favor, it appears that Harris might possibly prevail. There are at least some facts in the complaint that could support a claim that would entitle Harris to a portion of the relief sought. The complaint does not conclusively establish that all the defendants are State agents, that their conduct arose from a function that would entitle them to State-agent immunity, and that no exception to

State-agent immunity applies. Accordingly, although the defendants who are not entitled to rely on collateral estoppel certainly may ultimately be entitled to State-agent immunity based on the facts that come to light after discovery, Harris's complaint on its face simply does not establish beyond a doubt that they are entitled to State-agent immunity and that dismissal of the entire action is appropriate.

#### Failure to State Claims

Harris concedes that the trial court properly ruled that she failed to state valid claims with respect to the counts alleging wrongful termination and requesting declaratory and injunctive relief. The Court has carefully considered her arguments on appeal regarding the trial court's dismissal of an additional seven counts, and we conclude that Harris has not met her burden as the appellant of demonstrating reversible error.

#### Conclusion

We affirm the trial court's judgment to the extent that it dismissed 9 of Harris's 12 counts. We also affirm the trial court's judgment dismissing the claims against defendants McMullan, Tofani, and Hicks -- including two of the negligence counts, which were asserted

against only either McMullan or Tofani -- on the basis of State-agent immunity. We reverse the judgment to the extent that it ruled that defendants Taylor, Hammond, Lambert, Woodfin, and Moss are entitled, at the motion-to-dismiss stage, to a dismissal based on State-agent immunity.<sup>3</sup>

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.

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<sup>3</sup>The Court acknowledges that none of Harris's three negligence-based counts were asserted against defendant Moss. Thus, the trial court's dismissal of the remaining claims effectively dismisses Moss from the action, notwithstanding that she is not, at this stage of the litigation, entitled to a dismissal based on State-agent immunity.